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March 24, 2020

Honorable Paul A. Engelmayer  
United States District Court Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**Re: United States v. Daniel Hernandez**  
**Docket No.: S5 18-CR-0834-004 (PAE)**

Dear Judge Engelmayer:

On March 22, 2020, I submitted a letter to this Court, asking your Honor to release Daniel Hernandez from jail and order home confinement due to Mr. Hernandez's at risk medical condition and the dangerous spread of the COVID-19. The government opposed my request, arguing that Mr. Hernandez was procedurally barred from making such a request at this time because he has not sought an administrative review through the Bureau of Prisons (hereinafter "BOP"). However, given Mr. Hernandez's status as a cooperating witness and the government's continued hold on Mr. Hernandez as a cooperator, Mr. Hernandez is unable to be in the custody of BOP, and instead, he is serving his 24-month sentence at a private jail.

It is somewhat ironic and extremely unfair that, given Mr. Hernandez has provided substantial assistance to the government and the government maintains a hold on Mr. Hernandez as a cooperator, the government has effectively prevented him from being a BOP prisoner and the government now opposes Mr. Hernandez's release because he has not made an administrative appeal with BOP. Most inmates with Mr. Hernandez's 24-month sentence would already be on home confinement or a half-way house. See 18 U.S.C. §§ 3621, 3624. Title 18, section 3624(c) of the United States Code requires the Bureau of Prisons to ensure that prisoners serving a term of imprisonment spend a portion of the final months of that term under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for reentry into the community.

As a non-BOP prisoner, Mr. Hernandez is incapable of taking any administrative action with BOP. Mr. Hernandez has done everything that the government has ever asked, and in return, the government now opposes Mr. Hernandez's request for home confinement, in an attempt to protect his health, based upon his inability to perform an administrative function which the government itself has made impossible.

Therefore, given Mr. Hernandez's high risk of death or serious complications if he contracts COVID-19, please issue an order modifying his sentence to allow him to begin home confinement immediately. New York Governor Andrew Cuomo has stated recently that New York City can expect a significant surge and spike of coronavirus cases within the next couple of weeks. As stated today by the Trump coronavirus task force, this country has seen 52,000 COVID-19 cases to date, with 685 deaths and 144 deaths today alone. Additionally, 60 percent of all new COVID-19 cases are coming out of the New York City metro area. These tragic numbers are sure to rise in the coming days and weeks. Mr. Hernandez should not be deprived of something that all other inmates are guaranteed by statute. Thank you for your consideration. Please contact me if you have any questions or need any additional information.

Very Truly Yours,

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